

September 21, 2004 CPC



STAFF'S  
REQUEST ANALYSIS  
AND  
RECOMMENDATION

05TW0100

Cyrus Aman  
Mohawk Subdivision

Midlothian Magisterial District  
Forest Hill Avenue and Mohawk Drive

REQUEST: Approval of an alternative standard to Section 17-35 (b) to permit the creation of a lot smaller than the average lot size and width in the subdivision.

RECOMMENDATION

Staff recommends approval of the alternative to Section 17-35 (b) for the following reasons:

- A. There is a limited history of resubdivision of the lots within the subdivision.
- B. The proposed resubdivision will not create any new lots beyond those depicted on the record plat.
- C. The creation of the proposed lot should have no adverse effects on the adjacent lots or the lots in the general area because the lot size far exceeds the minimum required lot size.
- D. The proposal conforms to the density recommendations in the Plan For Chesterfield by proposing a density of 1.47 dwelling units per acre.

GENERAL INFORMATION

Associated Public Hearing Case:

None

Developer:

Cyrus Aman

Location:

Forest Hill Avenue and Mohawk Drive

Existing Zoning and Land Use:

R-15 Single Family Residential (lot 2); Vacant (original lot 3) Mohawk Subdivision

Size:

1.35 acres

Adjacent Zoning and Land Use:

North - R-15; Mohawk Subdivision, Single family residential

East - R-15; Mohawk Subdivision, Single family residential

South - R-15; Church

West - R-15; Mohawk Subdivision, Single family residential

BACKGROUND

**Section 17-35 (b)** states:

- (b) In districts zoned for residential or residential townhouse uses, no resubdivision shall be approved where the newly created lot(s) are smaller than the average lot size and lot width of other lots in that block. However, this requirement shall not apply to the resubdivision of lots within an existing subdivision where the purpose is to adjust lot lines and no new lots are created, or where the resubdivision involves a submission of a new tentative plat that incorporates more than 90 percent of the originally recorded block or section.

In this case, the subdivider does not control ninety (90) percent of the lots in this block of Mohawk subdivision.

Relief to the provisions of Section 17-35 (b) is permitted by Section 17-8, which states:

“Unless mandated by state code, the director of planning or planning commission may approve alternatives to the general provisions of this chapter in cases of unusual situations or where strict adherence to these general regulations would result in substantial injustice or hardship. The director of planning may refer any request to the planning commission. Such alternatives shall substantially comply with the provisions of this chapter so that justice may be done and the public interest secured. Such alternatives shall not have the effect of

nullifying the intent and purpose of this chapter; and the alternative shall not be approved unless the subdivider presents evidence that:

- (a) the granting of the alternative will not be detrimental to the public safety, health or welfare, or injurious to other property or improvements in the neighborhood in which the property is located;
- (b) the conditions upon which the request for an alternative is based are unique to the property for which the alternative is sought, and are not applicable, generally, to other property;
- (c) because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the provisions of this chapter were carried out;
- (d) and the purpose of the alternative is not based exclusively upon a financial consideration.”

The current lot 2 was originally recorded as lots 2 and 3 (See Attachment 1). A total of twenty-three (23) lots were recorded. Some time after the lots were created both lots were purchased and combined. The existing house constructed on original lot 2 was constructed too close to the eastern property line to make recreation of the original lot 3 impossible. The side property line needs to shift approximately 12.79 feet to have the house comply with setback requirements. (See Attachment 3)

There are nine (9) lots in the recorded subdivision block with an average lot size of 30,276 square feet. The original lot 3 had a lot size of approximately 29,520 square feet. The proposed lot will have a lot size of 27,007 square feet which is larger than the smallest lot with 24,494 square feet but smaller than the average lot size. If approved there will be two (2) lots smaller and one (1) lot of approximately the same size as the proposed lot 3 in the block. All lots are substantially larger than the minimum required lot size.

There has been one (1) resubdivision done in another block of the subdivision that resulted in a lot that was smaller than the average lot size in that block. This resubdivision has had no adverse impact on the adjacent houses and staff does not believe that the proposed division will have any impact on the lots adjacent to it.

The 2001 Subdivision Ordinance amendment incorporated a requirement that a subdivider who wished to subdivide existing lots below the average lot size and width was required to include ninety (90) percent of the lots in the section.

Section 17-8 of the Subdivision Ordinance allows alternatives to the general provisions of the Subdivision Ordinance in unusual situations where the strict adherence to the standards would create an unjust hardship.

### CONCLUSIONS

Based upon the applicant's statement (Attachment 3) and the size of the proposed resubdivision lots, staff supports the granting of an alternative.

AN ORDINANCE TO AMEND THE CODE OF THE COUNTY  
OF CHESTERFIELD, 1978, AS AMENDED, BY AMENDING  
AND REENACTING SECTION 19-19 RELATING TO  
MODIFICATIONS TO DEVELOPMENT STANDARDS AND REQUIREMENTS

BE IT ORDAINED by the Board of Supervisors of Chesterfield County:

- (1) *That Section 19-19 of the Code of the County of Chesterfield, 1978, as amended, is amended and reenacted to read as follows:*

Sec. 19-19. Planning commission may grant modifications to development standards and requirements.

(a) Except for those development standards or requirements which must be modified by the granting of a variance, special exception, conditional use or a rezoning, the planning commission may grant modifications, with or without conditions, to development standards or requirements specified in this chapter. The planning commission shall fix a reasonable time for the hearing of an application under this section and decide the same within 60 days after its first hearing on the matter, unless the applicant requests or consents to action beyond such time or unless the applicant withdraws the request.

(b) No modification to a development standard or requirement shall be authorized by the planning commission unless it considers and determines substantial compliance with all of the following factors:

- (1) By reason of the exceptional narrowness, shallowness, size or shape of the specific piece of property or nearby properties or by reason of exceptional topographic conditions or other exceptional situation or condition relating to such properties the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the use of the property.
- (2) The granting of the modification will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience, and the hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- (3) The modification will not be injurious to the use and enjoyment of adjacent property owners; will not diminish or impair property values within the neighborhood; will not change the character of the district; and will not be detrimental to or endanger the public health, safety or general welfare.
- (4) The condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.

- (5) The granting of such modification will allow the project to comply with the comprehensive plan.

(c) In authorizing a modification, the planning commission may impose conditions regarding the location, character and other features of the proposed building, structure or use as it may deem necessary to the public interest; and it may require a guarantee or bond to remain in effect until compliance with such conditions has occurred.

(d) The planning commission shall not grant more than the minimum necessary modification to the appropriate development standard or requirement to resolve the hardship. The planning commission shall not grant a permanent modification to a standard or requirement if a temporary modification will suffice. A temporary modification may be granted if the planning commission determines that permanent compliance will be obtained in a future phase of development.

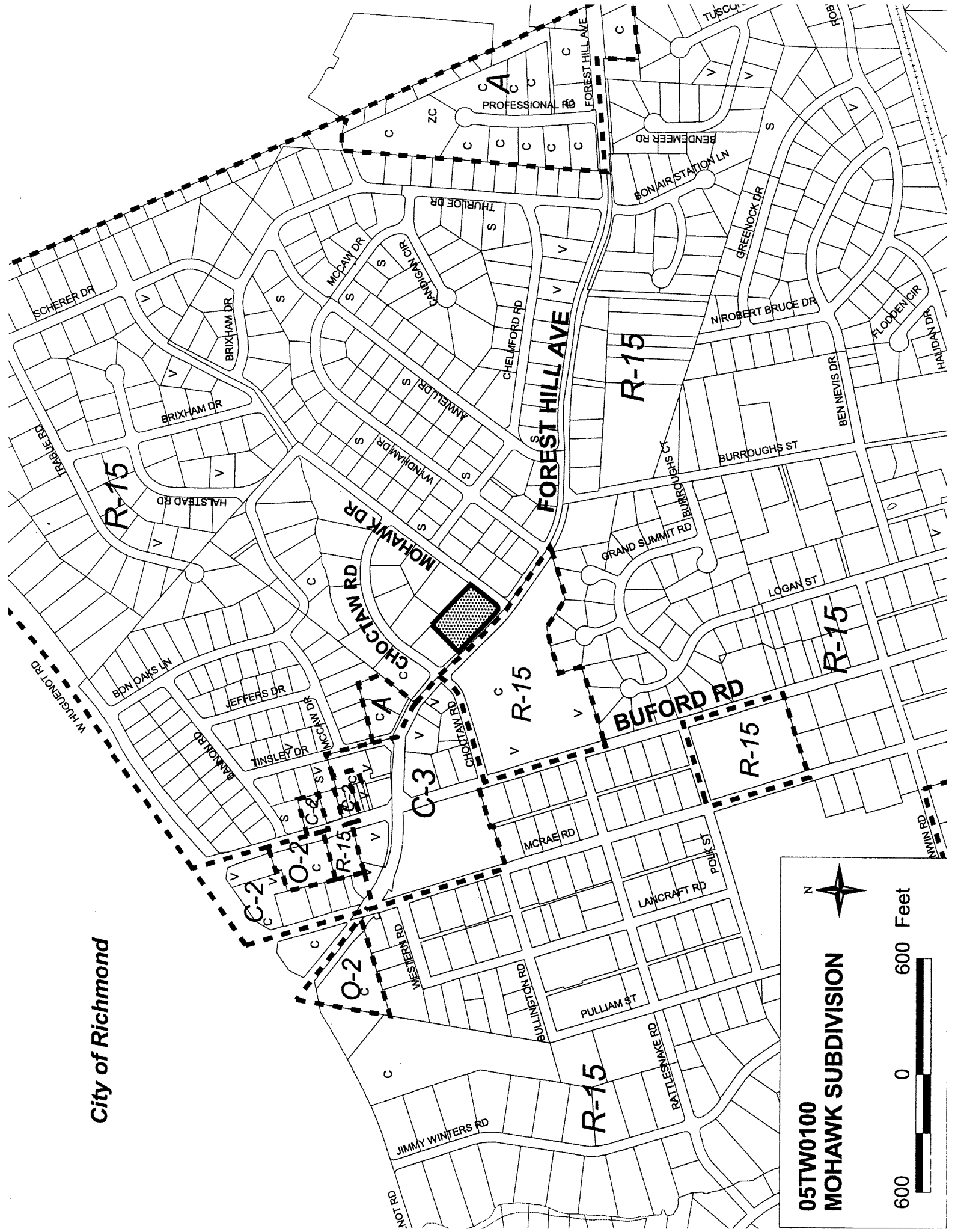
(e) The planning commission shall not grant a modification to any development standard or requirement if:

- (1) The granting of the modification will constitute the granting of a variance, special exception, conditional use or a rezoning.
- (2) Ordinary financial considerations are the principal reason for the requested modification.
- (3) The modification amends a property-specific condition imposed by the board of supervisors or the board of zoning appeals, unless such condition specifically grants such modification authority to the planning commission.
- (4) The applicant created the condition or situation generating the need for the modification and the applicant has not exhausted all other practicable solutions to the problem, including, but not limited to, the acquisition of additional property, the elimination or redesign of structures, or the reduction of development density.

(f) If the applicant disagrees with the planning commission's final decision, he may file a written appeal with the circuit court within 60 days of that decision. In addition, adjacent property owners may appeal the planning commission's final decision by filing a written appeal with the circuit court within 60 days of that decision. Adjacent property owners' appeals shall be limited to conditions which directly affect the property owners and include access, utility locations, buffers, conditions of zoning, architectural treatment and land use transitions. The court shall fix a reasonable time for hearing the appeal. During the appeal, the director of planning shall not approve any applicable site plan, building permit or record plat for any construction that would or could be affected by the appeal.

(Code 1978, § 21.1-12.1; Ord of 6-12-96, § 1)

City of Richmond



05TW0100  
MOHAWK SUBDIVISION



JOHN H. FOSTER  
CERTIFIED SURVEYOR  
RICHMOND, VIRGINIA

USE: RESIDENTIAL  
 DISTANCES SHOWN ON CENTER LINE OF LOTS 3112  
 WHICH IS THE REAR LOT LINE.  
 TEMPORARY TURNAROUND EASEMENT TO  
 REVERT TO ADJACENT PROPERTY OWNERS  
 WHEN STREET IS EXTENDED.





**TIMMONS GROUP**  
YOUR VISION ACHIEVED THROUGH OURS.

June 21, 2004

Mr. David Hainley  
Planning Administrator  
Chesterfield County  
P.O. Box 40  
Chesterfield, VA 23832

RE: Mohawk Subdivision Lots 2 & 3, Block A-Request for modification to the development standards and requirements

Dear Mr. Hainley:

On behalf of Mr. and Mrs. Cyrus Aman, we hereby respectfully request a modification to the development standards and requirements for the existing Mohawk Subdivision, Lots 2 & 3, Block A. Specifically, we are requesting an alternative to the general provisions of the Chesterfield County Subdivision Ordinance found in Article II, Division 1, Sec. 17-35 (b). The section states that in districts zoned for residential or residential townhouse uses, no resubdivision shall be approved where the newly created lot(s) are smaller than the average lot size and width of other lots in that block.

The subject property, known as Mohawk Subdivision Lots 2 & 3, Block A, is located on the northwest corner of the intersection of Forest Hill Avenue and Mohawk Drive in the Midlothian Magisterial District. The property is zoned for residential use and falls under the R-15 Residential District (see the attached plat). The property was originally recorded as part of the Mohawk Subdivision (P.B. 8 PG. 177) and was recorded as two separate lots. In our research of the property we were unable to locate any recorded agreement or plat which combined the two lots into one as they are currently shown in the Chesterfield County GIS system.

There is an existing single family home located on the property. The location of the existing dwelling will not allow for the lot to be re-subdivided as originally recorded. We propose to re-subdivide the property based on the location of the existing dwelling and the requirements of the R-15 Residential District. The resulting lots are 31,842 sq. ft. and 27,007 sq. ft. in size and 162.79' and 143.42' in width respectively. The average lot size and width of the other lots in that block are 30,470 sq. ft. and 158' respectively. The minimum lot size in that block is 24,494 sq. ft. and the maximum is 41,044 sq. ft. The minimum lot width in that block is 138' and the maximum is 193'. These sizes and widths all exceed the R-15 Residential District requirements of 15,000 sq. ft. and 100'.

The attached plan shows the location of the existing residential dwelling, existing lot lines and the proposed lot line.

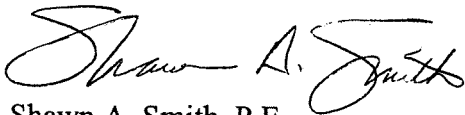
The modification will not be injurious to the use and enjoyment of adjacent property owners. The modification will not diminish or impair property values within the neighborhood or change the character of the district. The modification will not be detrimental to or endanger the public health, safety or general welfare.

The situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Chesterfield County Zoning Ordinance.

The granting of this modification will allow the project to comply with the comprehensive plan, which calls for residential uses in this area.

For the reasons stated above, we respectfully request that the Planning Staff and Planning Commission approve the request for the modification to the development standards and requirements.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Shawn A. Smith".

Shawn A. Smith, P.E.

cc: Bon Air Baptist Church-Bernard Savage  
Mr. and Mrs. Cyrus Aman